

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DOMINIC ANTHONY MILLETTE,

Plaintiff,

V.

SHAUN MCGHEE,

Defendant.

CASE NO. 1:21-CV-703-WHA-CSC
[WO]

ORDER

Before the court is the Magistrate Judge's Recommendation, filed on October 27, 2021 (doc. 4), and the objections thereto, and motions which this court construes as objections. (Docs. 6, 7, 8, and 9).

Following an independent evaluation and *de novo* review of the file in this case, *see* 28 U.S.C. § 636(b), the court finds the objections to be without merit and due to be overruled.

Plaintiff Dominic Anthony Millette (“Millette”) is incarcerated in Houston County. He has brought this 42 U.S.C. §1983 action against his former defense attorney Shaun McGhee (“McGhee”). McGhee is identified as a private attorney in the complaint. (Doc. 1). The Magistrate Judge recommended that the case be DISMISSED with prejudice before service of process in accordance with 28 U.S.C. § 1915(e)(2)(B)(i) on the sole basis that Millette has failed to sue a state actor who has violated his constitutional rights.

An essential element of a 42 U.S.C. § 1983 action is that a person acting under color of state law committed the asserted constitutional deprivation. *American Manufacturers Mutual Ins. Company v. Sullivan*, 526 U.S. 40, 49–50 (1999). In his objections, Millette fails to

show that his attorney engaged in any action under color of state law. Accordingly, it is

ORDERED that:

1. The Objections are OVERRULED.
2. The Court ADOPTS the Recommendation of the Magistrate Judge.
3. The case is DISMISSED with prejudice before service of process.

A separate Judgment will be entered.

DONE this 18th day of November, 2021.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE